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TITLE 326 AIR POLLUTION CONTROL DIVISION

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**Proposed Rule**  
LSA Document #12-500

DIGEST

Amends [326 IAC 2-1.1-5](#), [326 IAC 2-5.1-3](#), and [326 IAC 2-6.1-5](#) concerning requirements for the protection of ambient air quality standards in construction permits. Effective 30 days after filing with the Publisher.

**HISTORY**

First Notice of Comment Period: August 29, 2012, Indiana Register (DIN: [20120829-IR-326120500FNA](#)).

Second Notice of Comment Period: February 6, 2013, Indiana Register (DIN: [20130206-IR-326120500SNA](#)).

Notice of First Hearing: February 6, 2013, Indiana Register (DIN: [20130206-IR-326120500PHA](#)).

Date of First Hearing: May 8, 2013.

**PUBLIC COMMENTS UNDER [IC 13-14-9-4.5](#)**

[IC 13-14-9-4.5](#) states that a board may not adopt a rule under [IC 13-14-9](#) that is substantively different from the draft rule published under [IC 13-14-9-4](#), until the board has conducted a third comment period that is at least 21 days long. Because this proposed rule is not substantively different from the draft rule published on February 6, 2013, at DIN: [20130206-IR-326120500SNA](#), the Indiana Department of Environmental Management (IDEM) is not requesting additional comment on this proposed rule.

**SUMMARY/RESPONSE TO COMMENTS FROM THE SECOND COMMENT PERIOD**

The Indiana Department of Environmental Management (IDEM) requested public comment from February 6, 2013, through March 8, 2013, on IDEM's draft rule language. IDEM received comments from the following parties:

B Paul Consulting, LLC on behalf of SO<sub>2</sub> Project (BP)

Bingham Greenebaum Doll on behalf of CASE Coalition (BGD)

Indiana Energy Association on behalf of the Indiana Utility Group (IEA)

American Electric Power Service Corporation (AEP)

Following is a summary of the comments received and IDEM's responses thereto:

*Comment:* Change the tense of the proposed amendments to [326 IAC 2-1.1-5](#) from passive voice to active voice. The introductory part of [326 IAC 2-1.1-5\(a\)](#) is confusing and includes a double negative. The commenter provided suggested language. (BP)

*Comment:* The proposed amendments include very confusing language, double negatives, and suggest an automatic finding of an interference with the national ambient air quality standards (NAAQS) if one of the listed conditions is met in proposed [326 IAC 2-1.1-5\(a\)](#). The commenter provided suggested language. (BGD)

*Response:* IDEM agrees and has revised the language in [326 IAC 2-1.1-5\(a\)](#) in line with the commenter's suggested language.

*Comment:* Remove the phrase "will interfere with attainment or maintenance of any National Ambient Air Quality Standards (NAAQS) set forth in [326 IAC 1-3](#) because the approval" from the proposed [326 IAC 2-1.1-5\(a\)](#). This language could be interpreted to prohibit source modifications that themselves do not trigger the nonattainment requirements of [326 IAC 2-3](#), as a result of a theoretical claim that the modification interferes with the attainment of the NAAQS. (IEA) (AEP)

*Response:* The "interference" language cannot be removed because it is a key part of the requirements in this section. U.S. EPA's requirements for the review of new sources and modifications at 40 CFR 51.160 requires states to have rules in place to determine if the construction or modification will result in interference with attainment or maintenance of a national standard in the state in which the proposed source or modification is located or in a neighboring state. IDEM believes that the modified draft rule language addresses the commenter's concern for the potential misinterpretation of language.

*Comment:* IDEM's proposed language in [326 IAC 2-1.1-5\(b\)](#) gives IDEM authority to establish emission limitations in operating permits to prevent NAAQS violations. This language seems to run counter to IDEM's express purpose of limiting the authority to evaluate potential NAAQS impacts to preconstruction permitting actions. IDEM should delete the reference to operating permits in [326 IAC 2-1.1-5\(b\)](#) so that it is clear that IDEM can only establish permit conditions to address potential NAAQS issues in preconstruction permits. Emission limits can be established in the preconstruction permit and incorporated into the operating permit. (BP)

*Comment:* IDEM accidentally leaves a reference to operating permits in [326 IAC 2-1.1-5\(b\)](#) of the proposed rules despite IDEM's stated objective to limit the authority to evaluate potential NAAQS impacts to preconstruction permitting actions. (BGD)

*Comment:* IDEM should delete the proposed [326 IAC 2-1.1-5\(b\)](#) because it conflicts with IDEM's stated goals in this rulemaking, there is no stated basis for this change, and the apparent goals of this section are already

available through other rules. By allowing emission limits to be set in operating permits defeats the goal of clarifying applicability to be limited to preconstruction approvals. The original [326 IAC 2-1.1-5\(b\)](#) related solely to allowing IDEM to require modeling to ensure compliance with the NAAQS. The current proposal sets forth authority to establish emission limits. Other existing rules give the commissioner the authority to impose new or revised emission limits in operating permits where needed. For example, the Title V rules at [326 IAC 2-7-9\(a\)](#) allows permits to be reopened and emission limits to be established and the FESOP rules at [326 IAC 2-8-8\(a\)](#) allow such reopening. (IEA) (AEP)

*Response:* IDEM agrees and has removed the proposed revisions to [326 IAC 2-1.1-5\(b\)](#).

#### **SUMMARY/RESPONSE TO COMMENTS RECEIVED AT THE FIRST PUBLIC HEARING**

On May 8, 2013, the Environmental Rules Board (board) conducted the first public hearing/board meeting concerning the development of amendments to [326 IAC 2-1.1-5](#), [326 IAC 2-5.1-3](#), and [326 IAC 2-6.1-5](#). Comments were made by the following parties:

Jennifer Thompson, Bingham Greenebaum Doll on behalf of CASE Coalition (BGD)

Following is a summary of the comments received and IDEM's responses thereto:

*Comment:* The commenter supports the department's decision to modify or delete [326 IAC 2-1.1-5\(b\)](#) at final adoption.

*Response:* The department concurs.

#### **[326 IAC 2-1.1-5](#); [326 IAC 2-5.1-3](#); [326 IAC 2-6.1-5](#)**

SECTION 1. [326 IAC 2-1.1-5](#) IS AMENDED TO READ AS FOLLOWS:

#### **[326 IAC 2-1.1-5](#) Air quality requirements**

**Authority:** [IC 13-14-8](#); [IC 13-15-2](#); [IC 13-17-3-4](#); [IC 13-17-3-11](#)

**Affected:** [IC 13-15](#); [IC 13-17](#)

Sec. 5. (a) The commissioner shall not issue a registration, permit, **preconstruction approval to any person for construction or modification approval, or operating permit revision under this article of any source or emission unit** if the commissioner determines **that** the terms and conditions of the registration, permit, modification approval, or operating permit revision: **preconstruction approval:**

- ~~(1) would allow a source to cause or contribute to a violation of the~~ **will interfere with attainment or maintenance of any National Ambient Air Quality Standards (NAAQS) set forth in [326 IAC 1-3](#);**
- ~~(2) would allow a violation of a PSD maximum allowable increase;~~
- (2) do not comply with the requirements of [326 IAC 2-2](#) for construction or modification of a major stationary source or major modification as defined in [326 IAC 2-2](#) that is or will be located in an attainment or unclassified area under [326 IAC 1-4](#);**
- (3) do not comply with the requirements of [326 IAC 2-3](#) for construction or modification of a major stationary source or major modification as defined under [326 IAC 2-3](#) that is or will be located in a nonattainment area under [326 IAC 1-4](#);**
- ~~(3) (4) do not assure compliance with all applicable air pollution control rules, except as provided by an enforceable compliance schedule; or~~
- ~~(4) (5) are not protective of the public health.~~

(b) The commissioner may require any source to perform an air quality analysis to demonstrate compliance with the NAAQS.

(Air Pollution Control Division; [326 IAC 2-1.1-5](#); filed Nov 25, 1998, 12:13 p.m.: 22 IR 990)

SECTION 2. [326 IAC 2-5.1-3](#) IS AMENDED TO READ AS FOLLOWS:

#### **[326 IAC 2-5.1-3](#) Permits**

**Authority:** [IC 13-14-8](#); [IC 13-17-3-4](#); [IC 13-17-3-11](#)

**Affected:** [IC 13-15-4-9](#); [IC 13-17](#)

Sec. 3. (a) On and after December 25, 1998, a new source must obtain a construction permit prior to beginning construction of an emissions unit under either of the following conditions:

- (1) The potential to emit is equal to or greater than the following:
  - (A) One (1) ton or more per year of lead or lead compounds measured as elemental lead and the source is

one (1) of the following:

- (i) A primary lead smelter.
- (ii) A secondary lead smelter.
- (iii) A primary copper smelter.
- (iv) A lead gasoline additive plant.
- (v) A lead-acid storage battery manufacturing plant that produces two thousand (2,000) or more batteries per day.

(B) Five (5) tons or more per year of lead or lead compounds measured as elemental lead and the source is not listed in clause (A).

(C) One hundred (100) tons per year of carbon monoxide (CO).

(D) Ten (10) tons per year of any single HAP or twenty-five (25) tons per year of any combination of HAPs listed pursuant to Section 112(b) of the CAA.

(E) Twenty-five (25) tons per year of the following regulated air pollutants:

- (i) PM, PM<sub>10</sub>, or direct PM<sub>2.5</sub>.
- (ii) Sulfur dioxide (SO<sub>2</sub>).
- (iii) Nitrogen oxides (NO<sub>x</sub>).
- (iv) VOC.
- (v) Hydrogen sulfide (H<sub>2</sub>S).
- (vi) Total reduced sulfur (TRS).
- (vii) Reduced sulfur compounds.
- (viii) Fluorides.

(2) The source belongs to any of the following source categories:

(A) A source consisting of a chromium electroplating tank, chromium anodizing tank, or an operation subject to [326 IAC 20-8](#). Sources consisting only of decorative chromium electroplating tanks that use a trivalent chromium process that incorporates a wetting agent that are subject to section 2 of this rule are not included.

(B) A source that includes medical waste incinerators subject to 40 CFR 60, Subpart Ec\*.

(C) Area or minor sources that include an emission unit or units that require a Part 70 operating permit under [326 IAC 2-7](#).

(b) Any person proposing the construction of a new source and required to obtain a construction permit under subsection (a), including any source or emissions unit that is subject to [326 IAC 2-2](#), [326 IAC 2-3](#), or [326 IAC 2-4.1](#), shall prepare and submit a permit application to the commissioner in accordance with subsection (c).

(c) At a minimum, an application shall include the following information:

(1) The company name and address.

(2) The following descriptive information:

- (A) A description of the nature and location of the proposed construction.
- (B) The design capacity and typical operating schedule of the proposed construction.
- (C) A description of the source and the emissions unit or units comprising the source.
- (D) A description of any emission control equipment, including design specifications.

(3) A schedule for construction of the source.

(4) The following information as needed to assure all reasonable information is provided to evaluate compliance consistent with the permit terms and conditions, the underlying requirements of this title and the CAA, the ambient air quality standards set forth in [326 IAC 1-3](#), or the prevention of significant deterioration maximum allowable increase under [326 IAC 2-2](#):

(A) Information on the nature and amount of the pollutants to be emitted, including an estimate of the potential to emit any regulated air pollutants.

(B) Estimates of offset credits as required under [326 IAC 2-3](#), for sources to be constructed in nonattainment areas.

(C) Monitoring, testing, reporting, and record keeping requirements.

(D) Any other information (including, but not limited to, the air quality impact) determined by the commissioner to be necessary to demonstrate compliance with the requirements of this title and the requirements of the CAA, whichever are applicable.

(5) Each application shall be signed by an authorized individual, unless otherwise noted, whose signature constitutes an acknowledgment that the applicant assumes the responsibility of assuring that the source, emissions unit or units, or emission control equipment will be constructed and will operate in compliance with all applicable Indiana air pollution control rules and the requirements of the CAA. The signature shall:

(A) constitute affirmation that the statements in the application are true and complete, as known at the time of completion of the application; and

(B) subject the applicant to liability under state laws forbidding false or misleading statements.

(d) If the commissioner finds an application submitted in accordance with this rule to be incomplete, the commissioner shall mail a notice of deficiency to the applicant that specifies the portions of the application that:

- (1) do not contain adequate information for the commissioner to process the application; or
- (2) are not consistent with applicable law or rules.

The applicant shall forward the required additional information to the commissioner, or request additional time for providing the information, within thirty (30) calendar days of receipt of the notice of deficiency. If the additional information is not submitted within thirty (30) calendar days, or the additional time provided by the commissioner, the application may be denied in accordance with [IC 13-15-4-9](#).

(e) Permits issued under this ~~article~~ **rule** shall contain the following:

(1) Emission limitations for any source or emissions unit that assure:

- (A) the ambient air quality standards set forth in [326 IAC 1-3](#) will be attained or maintained, or both;
- (B) the applicable prevention of significant deterioration maximum allowable increases set forth in [326 IAC 2-2](#) will be maintained;
- (C) the public health will be protected; and
- (D) compliance with the requirements of this title and the requirements of the CAA will be maintained.

(2) Monitoring, testing, reporting, and record keeping requirements that assure reasonable information is provided to evaluate compliance consistent with the permit terms and conditions, the underlying requirements of this title and the CAA. The requirements shall be in accordance with [326 IAC 3](#) and other applicable regulations.

(3) A requirement that any revision of an emission limitation, monitoring, testing, reporting, and record keeping requirements shall be made consistent with the permit revision requirements under [326 IAC 2-6.1-6](#), [326 IAC 2-7-12](#), or [326 IAC 2-8-11.1](#).

(4) The following requirements with respect to compliance:

- (A) The commissioner may require stack testing, monitoring, or reporting at any time to assure compliance with all applicable requirements. Any monitoring or testing shall be performed in accordance with [326 IAC 3](#) or other methods approved by the commissioner.
- (B) Upon presentation of credentials and other documents as may be required by law, the owner or operator shall allow the commissioner, an authorized representative of the commissioner, or the U.S. EPA to perform the following:
  - (i) Enter upon the premises where:
    - (AA) a permitted source is located or emissions related activity is conducted; or
    - (BB) records required by a permit term or condition are kept.
  - (ii) Have access to and copy any records that must be kept under this title or the conditions of a permit or permit revision.
  - (iii) Inspect any:
    - (AA) operations;
    - (BB) processes;
    - (CC) emissions units (including monitoring and air pollution control equipment); or
    - (DD) practices;regulated or required under a permit or permit revision.
  - (iv) Sample or monitor substances or parameters for the purpose of assuring compliance with a permit, permit revision, or applicable requirement, as authorized by the CAA and this title.
  - (v) Document alleged violations using cameras or video equipment. The documentation may be subject to a claim of confidentiality under [326 IAC 17.1](#).

(5) For sources that will operate pursuant to an operating permit under [326 IAC 2-6.1](#), a requirement that an authorized individual provide an annual notice to the department that the source is in operation and in compliance with the permit. The commissioner may request that the source provide an identification of all emissions units that have been installed that are described under [326 IAC 2-1.1-3\(d\)\(1\)](#) through [326 IAC 2-1.1-3\(d\)\(31\)](#) with the annual notification.

(f) Any permit issued under this section shall conform to the permit content requirements under subsection (e), except for the following:

- (1) Any permit that includes limitations on the potential to emit of a source must conform with the federally enforceable state operating permit (FESOP) permit content and compliance requirements under [326 IAC 2-8-4](#) and [326 IAC 2-8-5](#).
- (2) An applicant may request that the permit content and compliance requirements conform with the Part 70 requirements under [326 IAC 2-7-5](#) and [326 IAC 2-7-6](#) if the applicant is also requesting that the Part 70 permit

issuance requirements under [326 IAC 2-7](#) apply.

(g) The commissioner shall provide for public notice and comment in accordance with [326 IAC 2-1.1-6](#) prior to issuing a construction permit.

(h) After receiving an approval to construct and prior to receiving approval to operate, a source shall prepare an affidavit of construction as follows:

(1) The affidavit shall include the following:

(A) The name and title of the authorized individual.

(B) The company name.

(C) An affirmation that the source was constructed in conformance with the requirements and intent of the construction permit application.

(D) Identification of any changes to the source not included in the construction permit application or any amendment thereof.

(E) The signature of the authorized individual.

(2) The affidavit shall be notarized.

(3) A source shall submit the affidavit to the commissioner after construction has been completed.

(i) A source may not operate any air pollutant emitting source or emissions unit prior to receiving a validation letter issued by the commissioner, except as provided in the following:

(1) A source may operate upon submission of an affidavit of construction that affirms that the source is described by, and will comply with, the construction permit as issued or previously amended.

(2) The commissioner shall issue a validation letter within five (5) working days of receipt of the affidavit of construction.

(3) The validation letter may authorize the operation of all or part of the source.

(4) The validation letter may include amendments to the permit if the amendments are requested by the source and if the amendment does not constitute a revision and require public notice and comment under [326 IAC 2-1.1-6](#).

(5) A validation letter may not approve the operation of any emissions unit if an amendment requested by the source would constitute a revision and require public notice and comment under [326 IAC 2-1.1-6](#).

\*This document is incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, **Legal Counsel**, Indiana Government Center North, ~~Tenth~~ **Thirteenth** Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.

(Air Pollution Control Division; [326 IAC 2-5.1-3](#); filed Nov 25, 1998, 12:13 p.m.: 22 IR 1009; errata filed May 12, 1999, 11:23 a.m.: 22 IR 3106; filed May 21, 2002, 10:20 a.m.: 25 IR 3059; filed Oct 1, 2010, 3:48 p.m.: [20101027-IR-326070372FRA](#); filed Feb 6, 2012, 2:54 p.m.: [20120307-IR-326090493FRA](#); filed Jun 11, 2012, 3:15 p.m.: [20120711-IR-326110251FRA](#))

SECTION 3. [326 IAC 2-6.1-5](#) IS AMENDED TO READ AS FOLLOWS:

#### **[326 IAC 2-6.1-5](#) Operating permit content**

**Authority:** [IC 13-14-8](#); [IC 13-17-3-4](#); [IC 13-17-3-11](#)

**Affected:** [IC 13-15](#); [IC 13-17](#)

Sec. 5. (a) Permits or permit revisions issued under this rule shall contain the following:

(1) Emission limitations for any source or emissions unit that assure

~~(A) the ambient air quality standards set forth in [326 IAC 1-3](#) will be attained or maintained, or both;~~

~~(B) the applicable prevention of significant deterioration maximum allowable increases set forth in [326 IAC 2-2](#) will be maintained;~~

~~(C) the public health will be protected; and~~

~~(D) compliance with the requirements of this title and the requirements of the CAA will be maintained.~~

(2) Monitoring, testing, reporting, and record keeping requirements that assure reasonable information is provided to evaluate compliance consistent with the permit terms and conditions, the underlying requirements of this title and the CAA. Such requirements shall be in accordance with [326 IAC 3](#) and other applicable regulations.



(3) A requirement that any revision of an emission limitation, monitoring, testing, reporting, and record keeping requirements shall be made consistent with the permit revision requirements under section 6 of this rule and the procedures under this rule.

(4) A requirement that upon presentation of credentials and other documents as may be required by law, the owner or operator shall allow the commissioner, an authorized representative of the commissioner, or the U.S. EPA to perform the following at a reasonable time of day and in accordance with safety requirements:

(A) Enter upon the premises where a permitted source is located or emissions-related activity is conducted or where records required by a permit term or condition are kept.

(B) Have access to and copy any records that must be kept under this title or the conditions of a permit or operating permit revision.

(C) Inspect any operations, processes, emissions units (including monitoring and air pollution control equipment), or practices regulated or required under a permit or operating permit revision.

(D) Sample or monitor substances or parameters for the purpose of assuring compliance with a permit, permit revision, or applicable requirement as authorized by the CAA and this title.

(E) Document alleged violations using cameras or video equipment. Such documentation may be subject to a claim of confidentiality under [326 IAC 17.1](#).

(5) A requirement that an authorized individual provide an annual notice to the department that the source is in operation and in compliance with the permit or registration. The commissioner may request that the source provide an identification of all emission units that have been installed that are described under [326 IAC 2-1.1-3\(e\)\(1\)](#) through [326 IAC 2-1.1-3\(e\)\(31\)](#) with the annual notification.

(b) An operating permit issued under this rule may include terms and conditions that, notwithstanding the permit modification or revision requirements under section 6 of this rule, allow the source to make modifications without review, provided the operating permit includes terms and conditions that prescribe emissions limitations and standards applicable to specifically identified modifications or types of modifications which may occur during the term of the permit. Such permit conditions shall include the following:

(1) Emission limitations and standards necessary to assure compliance with the permit terms and conditions and all applicable requirements.

(2) Monitoring, testing, reporting, and record keeping requirements that assure all reasonable information is provided to evaluate continuous compliance with the permit terms and conditions, the underlying requirements of this title, and the CAA.

(c) The commissioner shall not issue a minor source operating permit that includes terms and conditions that limit the potential to emit of the source to below emission thresholds for a Part 70 permit.

*(Air Pollution Control Division; [326 IAC 2-6.1-5](#); filed Nov 25, 1998, 12:13 p.m.: 22 IR 1016; errata filed May 12, 1999, 11:23 a.m.: 22 IR 3106; filed Dec 20, 2001, 4:30 p.m.: 25 IR 1572; readopted filed Oct 22, 2004, 10:35 a.m.: 28 IR 796; errata filed Jul 23, 2007, 4:19 p.m.: [20070815-IR-326070466ACA](#); readopted filed Aug 25, 2010, 2:42 p.m.: [20100922-IR-326100394BFA](#))*

### [Notice of Public Hearing](#)

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